IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION No. 1748 OF 2002.
DATE OF DECISION : 3-11-2009.

Kapoor Singh.

..... PETITIONER

Versus

State of Haryana.

..... RESPONDENT

CORAM:- HON'BLE MR.JUSTICE RAM CHAND GUPTA

Present: Mr. Hoshiar Singh Jaswal, Advocate
for the petitioner.

Mr. S.S.Randhawa, Additional A.G., Haryana.

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RAM CHAND GUPTA, J.

This revision petition is directed against the judgment dated 08.04.2002 rendered by the court of Additional Sessions Judge, Panchkula, vide which it dismissed the appeal against the judgment of conviction dated 06.04.2004 and order of sentence dated 07.04.2004 rendered by the court of Judicial Magistrate First Class, Panchkula, convicting the present revision-petitioner for offences under Sections 279/304-A of Indian Penal Code (hereinafter to be called as 'Act') and order of sentence to pay fine of Rs.1000/- under Section 279 of IPC and to

undergo RI for one year and to pay a fine of Rs.3000/- under Section 304-A of IPC.

2. Briefly put, the case of the prosecution is that on 28.02.1996 Mohan Lal – complainant alongwith Madan lal son of Mohan Lal was taking tea on a shop in front of Bus Adda of Chandimandir and that in the meantime a bus bearing No. HR-03-0453 H.M.T. came from Pinjore side at a very high speed, which was being driven in rash and negligent manner and hit against Shri K.L.Gupta, who was standing along the road-side, due to which the rear wheel of the bus ran over the head of said K.L.Gupta and he died on the spot. After registration of case and completion of investigation, the challan was filed against the accused. Accused was charged for offences punishable under Sections 279/304-A IPC to which he did not plead guilty and claimed trial.

3. In order to substantiate the allegations against the accused, the prosecution examined PW1 Dharam Pal, PW2 Mohan Singh, PW3 Ajay Gupta, PW4 Chandi Parshand, PW5 Nafe Singh and PW6 Ram Chander, ASI.

4. Statement under Section 313 of Cr.P.C of the accused was recorded in which he denied the incriminating evidence coming against him and pleaded innocence. However, the revision-petitioner did not lead any evidence in his defence.

5. Learned Trial Court came to the conclusion that prosecution has been able to prove its case against the accused for the commission of offences punishable under Sections 279/304-A of IPC beyond any shadow of reasonable doubt. The accused preferred appeal against the said

judgment and however, his appeal was dismissed by the court of Sessions and hence, present revision petition.

6. I have heard Mr. Hoshiar Singh Jaswal, learned counsel for the revision-petitioner and Mr. S.S.Randhawa, Additional Advocate General, Haryana `and have gone through the record carefully.

7. It is settled principle of law that in its revisional jurisdiction, this Court is not to reappreciate and reappraise the evidence until and unless, it comes to the conclusion that the findings recorded by the trial court are perverse, illegal and erroneous on account of misreading of evidence. The courts below while relying upon the cogent and convincing evidence of prosecution witnesses, were right in coming to the conclusion that the prosecution had proved its case against the accused beyond a reasonable shadow of doubt.

8. The revision-petitioner drove bus bearing No. HR-03-0453 at a very high speed and hit against Sh. K.L.Gupta, who was standing on the berm of the road due to which he succumbed to the injuries at the spot. The accident was witnessed by an independent witness – Mohan Singh PW2, who was sitting at a nearby tea shop. His statement has been duly corroborated by Dharam Pal PW1, who used to run a motor spare parts shop near the place of occurrence. Both the courts below came to the conclusion that both the witnesses are consistent in their deposition and that they are independent witnesses and there is nothing as to why they should have deposed falsely against the accused.

9. It has been argued by the learned counsel for the revision-petitioner that he is facing trial since 28.02.1996 i.e. for the last about 13

years and hence, he should be granted benefit of probation under the Probation of Offenders Act. On the point he has also placed reliance upon judgment of Hon'ble Apex Court in case *Paul George v. State of N.C.T. Of Delhi, 2008(2) RCR(Crl.) 478* and the judgment rendered by a co-ordinate Bench of this Court in *Rajpal v. State of Haryana, 2009(3) RCR (Crl.) 323*.

10. In both these judgments, the accused was a Govt. employee and was having a good career throughout and he was dismissed from service on account of his conviction and hence, keeping in view the peculiar facts and circumstances of those cases benefit of probation under the Probation of Offenders Act was granted.

11. However, law on the point as to whether the benefit of probation under the Probation of Offenders Act should be granted to the accused convicted for offence under Section 304-A of IPC, has been settled by Hon'ble Apex Court in ***Dalbir Singh v. State of Haryana, 2000 (2) RCR(Crl.) 816*** by observing that the courts should not as a normal rule, invoke the provisions of the Probation of Offenders Act when the accused is convicted of the offence under Section 304-A of IPC in causing death of human beings by rash or negligent driving. Relevant paragraphs No.12 and 13 of the judgment read as under:-

> "12. In State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538 : (AIR 1987 SC 861 : 1987 Cri LJ 776) this Court did not allow a sentence of fine, imposed on a driver who was convicted under S. 304-A, I.P.C. to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing death of a human being. In that case this

> Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.
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> 13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

12. This judgment was subsequently followed by the Hon'ble Apex Court in ***B.Nagabhushanam v. State of Karnataka, 2008(3) RCR (Crl.) 50*** and the benefit under the Probation of Offenders Act was denied to the accused for commission of offence punishable under Section 304-A IPC.

13. Hence, there is no force in the argument of the learned

counsel for the revision-petitioner that he deserves the benefit of probation under the Probation of Offenders Act. He has taken life of an innocent person, who was standinng on the berm of the road by driving the bus in rash and negligent manner. Learned trial court has already taken a lenient view by sentencing him to undergo one year R.I. only and hence, no interference in the order of sentence passed by the learned courts below is called for in this revision petition.

14. No other point was urged by the learned counsel for the revision-petitioner.

15. The judgments rendered by the courts below do not suffer from any illegality and infirmity and the same are liable to be upheld.

16. Hence, for the reasons recorded above, the present revision petition being devoid of any merit, is hereby dismissed. The judgments of conviction and order of sentence are upheld.

17. If the revision-petitioner is on bail, his bail bonds stands cancelled. The concerned Chief Judicial Magistrate shall take necessary steps to comply with the judgment with due promptitude keeping in view the applicability of provisions of Section 428 of Code of Criminal Procedure and submit his compliance report within two months.

18. The District and Sessions Judge concerned is also directed to ensure that the directions are complied with and that compliance report is sent within the time limit, to this Court.

(**RAM CHAND GUPTA**)
JUDGE

November 3, 2009.
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